

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	GC Docket No. 04-208
National Association of State Utility Consumer)	
Advocates' Petition for Declaratory Ruling)	
Regarding Monthly Line Items and Surcharges)	
Imposed by Telecommunications Carriers.)	

**COMMENTS OF THE
NEBRASKA PUBLIC SERVICE COMMISSION**

The Nebraska Public Service Commission (NPSC) respectfully submits these Comments in response to the Public Notice issued by the Federal Communications Commission's (FCC or Commission), in CG Docket No. 04-208, dated May 25, 2004, on the Petition of the National Association of State Utility Consumer Advocates for Declaratory Ruling (NASUCA Petition). The NPSC appreciates the opportunity to comment on the issues and concerns advanced by NASUCA in its Petition.

INTRODUCTION

On March 30, 2004, NASUCA filed a Petition for Declaratory Ruling seeking a Commission order declaring certain practices and charges to be unreasonable, unjust and unlawful and prohibiting carriers from imposing any separate monthly fees, line items or surcharges unless such charge is mandated by the federal, state or local government, and the amount charged conforms to the amount expressly authorized by federal, state, or local government authority.¹ NASUCA argues that a number of interexchange and CMRS carriers have been imposing line item surcharges which are misleading to consumers and which are

¹ NASUCA Petition at 68.

unreasonable and unjust.² Further, NASUCA states that many of the surcharges are excessive and bear no demonstrable relationship to the regulatory costs they purport to recover.³

As a general matter, the NPSC agrees that the statements and allegations provided in the NASUCA Petition warrant the Commission's attention. Specifically, the NPSC agrees the NASUCA's concern that surcharges increasingly being added to telephone bills are periodically misleading, cause customer confusion, and inhibit the public's ability to make informed decisions.

COMMISSION'S TRUTH IN BILLING ORDER

In its First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned docket,⁴ the Commission stated that its truth-in-billing principles and guidelines were established to "ensure that consumers are provided with basic information they need to make informed choices in a competitive telecommunications marketplace."⁵ To that end, the Commission adopted three basic requirements: 1) bills must be clearly organized, clearly identify the service provider, and highlight any new providers; 2) bills must contain full and non-misleading descriptions of charges; and 3) bills must contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges on the bill.⁶ A strong emphasis in the Commission's order was placed on the ability of consumers to make informed decisions in carrier selection, the selection of features and assuring that consumers are not misled or deceived by unscrupulous practices.

² See *Id.* at 37.

³ See *Id.* at 42.

⁴ See *In the Matter of Truth-In-Billing Format*, CC Docket No. 98-170, First Report & Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (*Truth-In-Billing Order*).

⁵ *Truth-In-Billing Order*, ¶ 1.

⁶ *Id.*, ¶ 5.

With respect to cost recovery, the Commission stated that it was not going to enact rigid rules which would have the effect of prohibiting carriers from recovering their costs. Assuming that the Truth-In-Billing guidelines would be followed, the Commission stated, “*that so long as we ensure that consumers are readily able to understand and compare these charges,* competition should ensure that they are recovered in an appropriate matter”⁷ (emphasis added). The Commission further stated that its goal was to “enable consumers to make comparisons among different service providers in connection with [these] charges”⁸ Because of the added surcharges, it is practically impossible for consumers to readily understand and compare charges for many interexchange and CMRS carriers. Moreover, as many of the line items are lumped together and vaguely described, it is further impossible to link the carrier surcharge to actual “regulatory compliance” cost of the carriers.

The Commission should investigate current carrier practices in relation to the principles and rules established in its Truth-In-Billing Order. Assuming the claims in the NASUCA Petition are true, the guidelines established in the Commission’s order are not being followed by all carriers and Commission action is necessary to prevent injury to consumers.

FULL AND NON-MISLEADING BILLED CHARGES

The NASUCA Petition argues that carrier surcharges are in violation of the Truth-In-Billing Order’s second principle, which requires full and non-misleading billed charges.⁹ The NPSC agrees with the NASUCA Petition that carriers should call the line items what they are and not lead consumers to believe that the surcharges are “government-mandated” or “regulatory compliance” charges when they are not. The NPSC agrees that in some carriers bills, the line

⁷ *Id.*, ¶ 55.

⁸ *Id.*

⁹ NASUCA Petition at 27.

item descriptions do not present sufficiently clear information so that customers can ascertain what they are being billed for and whether or not such a charge corresponds to what they have received and that the costs are consistent with their understanding of the price charged.¹⁰ Because of the confusing and misleading descriptions, consumers are not apt to know whether they are being billed correctly.

The NPSC records and resolves complaints against telecommunications carriers pursuant to its statutory authority. It is significant to note that in the 2003-2004 fiscal year, the NPSC recorded 891 complaints against interexchange carriers.¹¹ Of the 891 complaints 675 of those were categorized as billing complaints.¹² The NPSC also records complaints against wireless carriers. Of the 692 wireless complaints taken by the agency, 390 of those were related to billing. Although the NPSC does not record customer inquiries for telecommunications services, a large majority of the inquiries received are related to bill descriptions, newly added line items, and bill formatting.

If this practice is not prohibited as requested by NASUCA, consumers should at least be informed that charges and amounts may vary from carrier to carrier, and should be given a clear, non-misleading, explanation of these charges. Line item charges like those complained of in NASUCA's Petition should be disclosed prior to the point the consumer is locked into the carrier's plan so that consumers can make informed decisions.

Likewise, the NPSC agrees that the labeling of these line item charges should not give consumers the impression that such charges are "standard" or "consistent" amongst all carriers when they are not. Consumers are already hesitant to switch carriers believing that many of

¹⁰ *Truth-In-Billing Order*, ¶ 38.

¹¹ The NPSC does not record, for example, questions from consumers asking for clarification or further description of a charge appearing on the bill. However, if the consumer questions the propriety of such a charge or challenges the charge, the NPSC will record it as a complaint and work with the consumer to reach a satisfactory result.

¹² Other categories of complaints include: service, slamming, telemarketing, customer service and directory.

these charges are inescapable. Without further consumer protections in place, the NPSC believes that consumers would be further reticent to take advantage of the benefits of a competitive market.

CMRS CARRIERS

The NPSC further urges the Commission to expressly make its truth-in-billing requirements applicable to CMRS carriers. The NPSC agrees with the Commission's statement that "all consumers expect and should receive bills that are fair, clear and truthful."¹³ Although the Commission sought further comment on whether all the truth-in-billing rules should be likewise imposed upon CMRS carriers in order to protect consumers, the Commission stated it believed that the broad principles adopted should apply to all carriers both wireline and wireless.¹⁴ Further, the Commission stated that CMRS providers remain subject to the reasonableness and nondiscrimination requirements of sections 201 and 202 of the Act.¹⁵ What is even more problematic about the added line item fees wireless carriers charge, which are not included in the upfront advertised price of the plan, is that it is often too late for a consumer to change carriers without avoiding significant penalties for doing so.

EXCESSIVENESS AND RELATIONSHIP TO COSTS

The NASUCA Petition further alleges that the surcharges are excessive and bear no demonstrable relationship to the regulatory costs they purport to recover.¹⁶ The NPSC agrees that the carriers should at some level make a showing of the cost recovery needed and should be able to show a correlation between the estimated needed costs to the surcharge amount. While

¹³ *Id.*, ¶ 68.

¹⁴ *Id.*, ¶ 13.

¹⁵ *Id.*, ¶ 19.

¹⁶ NASUCA Petition at 42.

the NPSC has not undertaken its own analysis to determine whether the costs charged by the carriers correlate to the purported “regulatory compliance” costs, the NASUCA Petition makes clear that some action is needed to ensure that the surcharges added are fully compliant with Commission orders. Further, “regulatory compliance” charges or similarly-described charges should not be added to a carrier’s bill unless the carrier can point to a specific Commission order or rule permitting recovery of those costs.

The NPSC believes that the Commission should conduct an investigation to determine whether carriers have over-recovered or overstated their costs in violation of section 202 of the 1934 Act.

MISCELLANEOUS

In addition to the list of carrier cost recovery fees listed in the NASUCA Petition,¹⁷ the NPSC recently received notice that MCI WorldCom Communications, Inc. was introducing an “in-state access recovery fee.” The monthly recurring charge totaled \$1.30. Customers spending less than \$1.00 are exempt. The customer notice was as follows: “Effective July 1, 2004, a monthly recurring charge will increase your MCI(R) total charges.”¹⁸ The description of this fee is potentially misleading because of the NPSC’s traditional authority over intrastate access charges charged by local exchange carriers.¹⁹ Further, it is ironic that such a fee is now being added when the NPSC has recently *decreased* the access charges of local exchange carriers.²⁰

¹⁷ See NASUCA Petition at 12 to 23.

¹⁸ See Letter from MCI WorldCom Communications, Inc., to the Nebraska Public Service Commission, filed June 22, 2004.

¹⁹ See Neb. Rev. Stat. section 86-140 (2002 Supp.).

²⁰ See *In the Matter of the Nebraska Public Service Commission, on its own Motion, Seeking to Conduct an Investigation of Intrastate Access Charges for Rural ILECS*, Application No. NUSF-28, Findings and Conclusions (November 26, 2002)(Where the NPSC completely eliminated the CCL Element from incumbent local exchange carrier intrastate access charges as of January 1, 2004).

Such an access reduction is required to be passed through to customers of interexchange carriers.²¹

CONCLUSION

While the NPSC believes carriers should be free to recover their costs and further believes the truth-in-billing rules should be flexible enough for multi-state carriers to operate efficiently, the NPSC is concerned about how these line items are portrayed to consumers. For these reasons, the NPSC echoes many concerns voiced in NASUCA's Petition and believes that Commission action is necessary in order to ensure that consumers are not stripped of their ability to make informed decisions on account of misleading and over-stated carrier surcharges.

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Respectfully Submitted,

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²¹ Neb. Rev. Stat. section 86-140(2) provides "reductions made to access charges . . . shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges have been reduced."

